three times that amount would be $705.48. I understand that these corrected figures were accepted by the learned counsel appearing for the Public Prosecutor. The fine imposed by the learned Magistrate is accordingly reduced from $1,000 to $710.

In the event of the fine not being paid the learned Magistrate has imposed a sentence of six months simple imprisonment. It has been suggested that the period should be reduced on account of the appellant being only eighteen years of age. No doubt the learned Magistrate has considered this matter. In my opinion the offence is one of gravity, and I see no reason to interfere with this part of the sentence which the learned Magistrate has seen fit to impose.

Therefore the conviction is confirmed but the sentence is varied to a fine of $710 or six calendar months simple imprisonment.

Conviction Confirmed. Sentence Varied.

[ORIGINAL CIVIL JURISDICTION]

THOMAS, C. J.

February 26, 1935.

GAN KHOR .....**Plaintiff.**

v.

SOAN BIN PELITA .....**Defendant.**

[SELANGOR CIVIL SUIT No. 235 of 1934]

The Malay Reservations Enactment, 1913, section 8—Entry into possession of lands in Malay Reservation by chargee under power of attorney from chargor—The Land Code, 1926, Part X.

When the chargee of land in a Malay Reservation enters into possession of such land under a power of attorney executed by the chargor, he is not entitled to remain in possession when such power has been revoked, even though the charge has not been satisfied.

There is no such thing as a mortgage of land known to the law of the Federated Malay States, and apart from the express powers contained in the Land Code, 1926, a chargee has no right to enter into occupation of the land charged to him.

S. M. Yong for the plaintiff.

G. W. de Silva for the defendant.

Cur. adv. vult.

SIR SAMUEL THOMAS. C.J.—Gan Khor, the plaintiff in this suit, in the year 1927 arranged to purchase from the defendant, Soan bin Pelita, certain pieces of land comprised in E.M.R. 3203, 3204, 3205, and 3339 in the mukim of Ulu Yam in the district of Ulu Selangor. It was, however, noticed that inasmuch as the land was in a Malay reservation and that the defendant was a Malay, but the plaintiff was not, such a sale could not be effected owing to the provisions of the Malay Reservations Enactment, 1913. So a charge was executed on the 20th of April 1927 and thereby the defendant charged all the pieces of land which it had been proposed to sell. The consideration was stated to be $7,000. Interest was payable at the rate of 24 per cent per annum by equal monthly instalments of $140. The principal sum was repayable on the 20th of April, 1932.

Shortly after the execution of the charge the defendant gave the plaintiff a power of attorney. Clause 12 of the power of attorney gave the plaintiff right to enter into possession of all the lands of the defendant. Clause 18 gave the right to apply for and receive from any Government officer the quarterly allowance granted to the defendant in respect of the lands comprised in E.M.R. Nos. 3203, 3204, 3205 and 3339, and for that purpose to sign any instruments necessary. Clause 19 limited the power of attorney to those pieces of land. There was nothing in the power of attorney to say that it was irrevocable. It was in fact revoked. This is admitted in paragraph 4 of the statement of plaint. Paragraph 4 of the defence gives the date of revocation as the 18th of July, 1934.

After the charge had been executed, the plaintiff went into occupation and has remained in occupation ever since. The lands are planted with rubber. The coupons in respect of the sale of rubber were received by the plaintiff during the former period of restriction. In 1934 the Rubber Regulation Enactment came into force. Since the revocation of the power of attorney the defendant has refused to hand over the coupons in respect of the sale of rubber, and in consequence the plaintiff has been unable to dispose of a quantity of rubber collected.

These facts are not disputed, save that the defendant says that at the time the charge was executed, only a sum of $3,400 was owing. This sum together with the interest calculated at $3,600, together making $7,000, was to be paid off in five years. In view of the clear statement of the transaction contained in the charge I am unable to accept the defendant's attempt to vary the terms of a written document which is not supported by any independent evidence. The defendant complains that the plaintiff has not provided him with accounts, and that it was in consequence of that failure that the power of attorney was revoked.

At the hearing of the suit it was considered advisable that an opportunity should be given to the parties to come to some arrangement. At that time the defendant was not represented by counsel. There was further adjournment. Eventually the parties were not able to arrive at any agreement, and when the case came on again for hearing, the defendant was represented by Mr. de Silva.

I have thought it advisable in this judgment to set out the facts of the case before stating what exactly it is that the plaintiff claims. According to the prayer in the statement of plaint the plaintiff claims:—

(a) A declaration that the plaintiff is entitled to be in occupation of the lands held under E.M.R. 3203, 3204, 3205, and 3339 in the Mukim of Ulu Yam until such time as the debt secured by charge registered J. No. 430 27, charge 68 27, Ulu Selangor, is discharged.

(b) An order that the defendant be ordered to hand over to the plaintiff all the

coupons received by him from time to time against the lands held under the aforesaid titles.

(c) The sum of $176.95 being damages as set out in paragraph 10 hereof.

(d) An enquiry into the amount of the plaintiff's damages under paragraph 11 hereof.

(e) Such other relief as may seem fit.

The first question which arises is whether the plaintiff had any right to be in possession apart from the power of attorney. Even assuming that the charge was not prohibited by section 8 of the Malay Reservations Enactment, 1913, at the time the charge was executed the Land Code of 1926 was in force. Part X of that Code relates to charges. Section 135 relates to the power to receive rents. As far as I have been able to ascertain, there is no question of rents in the present case. Section 137 relates to the going into possession, and is as follows:—

(i) "If default is made in the maintenance or cultivation in a proper manner and according to the methods of good husbandry of any country land the chargee may in writing in the form in the Schedule XXVI with such variations of the form but not of the substance as the Collector may permit, apply to the Collector for a certificate that the chargor has made such default, and the Collector upon proof to his satisfaction of such default having been made may in writing in the form in Schedule XXVII give such certificate.

(ii) "The Registrar upon delivery to him of such certificate may in the form in Schedule XXVII authorise the chargee to enter into possession and receive the profits of the charged land, and no chargee shall except under the authority of such a certificate enter into possession and receive the profits of any charged land unless the chargor shall in writing have consented thereto.

(iii) "The provisions of this section shall only apply to land held under grant, lease of State land or certificate of title."

There is no suggestion that any of the requirements have been complied with, even if this section could be held to relate to E.M.R. land.

It must be remembered that a charge is a very different transaction to a mortgage. There is no such thing as a mortgage of land known to the law of the Federated Malay States. Charges alone are recognised. The rights arising from a charge are contained in the Land Code. It is not possible to seek to introduce the elements of an English mortgage into a charge as provided by the law of the Federated Malay States, and therefore apart from any express powers it is not correct to say that a chargee has the right to enter into occupation. Were it otherwise, there would undoubtedly be such an interest in land that it would be unquestionable that the charge itself was invalid under section 8 of the Malay Reservations Enactment, 1913.

However, it is unnecessary to decide in this case whether the charge is or is not valid under that Enactment, since, even assuming it is valid, the chargee has not entered into possession under the provisions of the Land Code. He has entered into possession by virtue of the power of attorney given by the defendant.

There has been some suggestion during the case that this power of Attorney was to continue until the debt had been paid. In my opinion the power speaks for itself, and it would be unwise to import any additional term on such evidence as has been adduced. The power of attorney is not irrevocable. It has in fact been revoked. Such being the case, the plaintiff is not entitled to remain in possession, and he is not entitled to receive the coupons. There cannot, therefore, be any question of damages under paragraph 11, for the plaintiff should have gone out of possession at the date that the power of attorney was revoked.

Under the power of attorney the plaintiff was entitled to manage the defendant's business as fully and completely as the defendant might do (clause 8), and also to pay all lawful debts of the defendant (clause 3). These powers would entitle the plaintiff to manage the lands in question, and to pay out any profits in reduction of the principal and interest on the charge. The plaintiff would have to furnish accounts, and in such accounts would no doubt appear, in due course, any sums which he had expended on behalf of the estate. If he expended sums in excess of the receipts, then he would be able to recover them against the defendant. That would be a very different proceeding to the present claim for damages.

I have considered the possibility of ordering accounts to be rendered in the present suit, but I consider that as the question of accounts may be involved in other issues. it would not be advisable to make any such order.

In that the plaintiff has not succeeded in respect of any of the heads of this claim, this suit must be dismissed with costs.

Suit dismissed.

[APPELLATE CRIMINAL JURISDICTION]

MUDIE, J.

March 11, 1935.

SUPPIAH ..... **Appellant**

v.

CHOP POH SENG HIN ..... **Respondent**

[NEGRI SEMBILAN MAGISTRATE'S CIVIL APPEAL No. 3 of 1935]

The Civil Procedure Code. 1918, sections 326, 327 and 328—Judgment-debtor summons—Procedure.

Before an order can be made under section 328 of the Civil Procedure Code. 1918, the provisions of section 327 must be complied with.

Appellant in person.

Respondent in person.